

Assembly Bill No. 1316

CHAPTER 507

An act to amend Sections 1367.3, 105280, 105285, 105290, 105310, 124125, 124130, and 124150 of, and to add Section 124151 to, the Health and Safety Code, and to amend Sections 10123.5 and 10123.55 of the Insurance Code, relating to childhood lead poisoning.

[Approved by Governor October 5, 2017. Filed with
Secretary of State October 5, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1316, Quirk. Public health: childhood lead poisoning: prevention.

Existing law, the Childhood Lead Poisoning Prevention Act of 1991, required the State Department of Public Health (formerly the State Department of Health Services) between July 1, 1992, and July 1, 1993, to adopt regulations establishing a standard of care at least as stringent as the most recent United States Centers for Disease Control and Prevention screening guidelines, whereby all children are evaluated for risk of lead poisoning by health care providers during each child's periodic health assessment. The standard of care, among others, is required to provide that, upon evaluation, those children determined to be at risk for lead poisoning, according to the regulations, are required to be screened. Existing law defines "lead poisoning" to mean the disease present when the concentration of lead in whole venous blood reaches or exceeds levels constituting a health risk, as specified in the most recent United States Centers for Disease Control and Prevention guidelines for lead poisoning as determined by the department, or when the concentration of lead in whole venous blood reaches or exceeds levels constituting a health risk as determined by the department, as specified. Existing law creates the Childhood Lead Poisoning Prevention Fund consisting of fees imposed on manufacturers and other persons formerly, presently, or both formerly and presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead that have significantly contributed historically, currently contribute, or both have significantly contributed historically and contribute currently to environmental lead contamination. The moneys in the fund are required to be expended, upon appropriation by the Legislature, for the purposes of the act.

This bill, among other things, would change the definition of "lead poisoning" to include concentrations of lead in arterial or cord blood. The bill would require that the regulations establishing a standard of care include the determination of risk factors for whether a child is at risk for lead poisoning and would require the department, when determining those risk factors, to consider the most significant environmental risk factors, as

specified. The bill would require that the regulations be developed by July 1, 2019, in consultation with medical experts, environmental experts, appropriate professional organizations, the public, and others, as determined by the department. The bill would also clarify that the lead screening would not be paid for by funds from the Childhood Lead Poisoning Prevention Fund.

This bill would further require the department, by March 1, 2019, and by every March 1 thereafter, to prepare and prominently post on its Internet Web site information that, among other things, evaluates the department's progress in identifying children with high blood lead levels and reducing the incidence of excessive childhood lead exposure in this state, as provided. The bill would require the department to use an electronic database, as provided, to support electronic laboratory reporting of blood lead tests, management of lead-exposed children, and assessment of sources of lead exposure. The bill would make conforming and technical changes, and would delete obsolete provisions.

Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires health insurers issuing group disability insurance that covers hospital, medical, or surgical expenses to provide benefits for comprehensive preventive care for children 18 years of age and younger under the terms and conditions agreed upon by the group policyholder and the insurer. Existing law requires those benefits to include periodic health evaluations, immunizations, and laboratory services in connection with those periodic health evaluations.

This bill, among other things, would add screening for blood lead levels in children who are at risk for lead poisoning to those required benefits, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1367.3 of the Health and Safety Code is amended to read:

1367.3. (a) Every health care service plan that covers hospital, medical, or surgical expenses on a group basis shall offer benefits for the comprehensive preventive care of children. This section shall apply to children 17 and 18 years of age, except as provided in subparagraph (D) of paragraph (2) of subdivision (b). Every plan shall communicate the availability of these benefits to all group contractholders and to all prospective group contractholders with whom they are negotiating. This section shall apply to a plan that, by rule or order of the director, has been exempted from subdivision (i) of Section 1367, insofar as that section and the rules thereunder relate to the provision of the preventive health care services described herein.

(b) For purposes of this section, benefits for the comprehensive preventive care of children shall comply with both of the following:

(1) Be consistent with both of the following:

(A) The most recent Recommendations for Preventive Pediatric Health Care, as adopted by the American Academy of Pediatrics.

(B) The most current version of the Recommended Childhood Immunization Schedule/United States, jointly adopted by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices, and the American Academy of Family Physicians, unless the State Department of Public Health determines, within 45 days of the published date of the schedule, that the schedule is not consistent with the purposes of this section.

(2) Provide for the following:

(A) Periodic health evaluations.

(B) Immunizations.

(C) Laboratory services in connection with periodic health evaluations.

(D) Screening for blood lead levels in children of any age who are at risk for lead poisoning, as determined by a physician and surgeon affiliated with the plan, if the screening is prescribed by a health care provider affiliated with the plan.

(c) For purposes of this section, a health care provider is any of the following:

(1) A person licensed to practice medicine pursuant to Article 3 (commencing with Section 2050) of Chapter 5 of Division 2 of the Business and Professions Code.

(2) A nurse practitioner licensed to practice pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(3) A physician assistant licensed to practice pursuant to Article 3 (commencing with Section 3513) of Chapter 7.7 of Division 2 of the Business and Professions Code.

SEC. 2. Section 105280 of the Health and Safety Code is amended to read:

105280. For purposes of this chapter, the following definitions apply:

(a) “Appropriate case management” means health care referrals, environmental assessments, and educational activities, performed by the appropriate person, professional, or entity, necessary to reduce a child’s exposure to lead and the consequences of the exposure, as determined by the United States Centers for Disease Control and Prevention, or as determined by the department pursuant to Section 105300.

(b) “Lead poisoning” means the disease present when the concentration of lead in whole venous, arterial, or cord blood reaches or exceeds levels constituting a health risk, as specified in the most recent United States Centers for Disease Control and Prevention guidelines for lead poisoning as determined by the department, or when the concentration of lead in whole venous, arterial, or cord blood reaches or exceeds levels constituting a health risk as determined by the department pursuant to Section 105300.

(c) “Department” means the State Department of Public Health.

(d) “Health assessment” has the same meaning as prescribed in Section 6800 of Title 17 of the California Code of Regulations.

(e) “Screen” means the medical procedure by which the concentration of lead in whole blood is measured.

(f) “Health care” means the identification, through evaluation and screening, if indicated, of lead poisoning, as well as any followup medical treatment necessary to reduce the elevated blood lead levels.

(g) “Environmental lead contamination” means the persistent presence of lead in the environment, in quantifiable amounts, that results in ongoing and chronic exposure to children.

SEC. 3. Section 105285 of the Health and Safety Code is amended to read:

105285. (a) The department shall adopt regulations establishing a standard of care, at least as stringent as the most recent federal Centers for Disease Control and Prevention screening guidelines, whereby all children are evaluated for risk of lead poisoning by health care providers during each child’s periodic health assessment. The regulations shall include the determination of risk factors for whether a child is “at risk.” When determining the risk factors, the department shall consider the most significant environmental risk factors, including, but not limited to, a child’s time spent in a home, school, or building built before 1978, a child’s proximity to a former lead or steel smelter or an industrial facility that historically emitted or currently emits lead, a child’s proximity to a freeway or heavily traveled roadway, other potential risk factors for lead exposure, and known sources of lead contamination. By July 1, 2019, the regulations shall be developed in consultation with medical experts, environmental experts, appropriate professional organizations, the public, and others as determined by the department.

(b) The standard of care shall require a child who is determined to be “at risk” for lead poisoning, according to the regulations adopted pursuant to subdivision (a), to be screened.

(c) The standard of care shall provide that a child shall not be screened pursuant to this chapter if the parent or guardian of the child refuses to consent to the screening.

(d) The standard of care shall provide that health care providers are responsible only for evaluation of all children, for screening of children determined to be at risk, and for medically necessary followup services.

(e) The fee imposed by Section 105310 shall not be used to fund blood lead screening under this section.

SEC. 4. Section 105290 of the Health and Safety Code is amended to read:

105290. When a child is identified with lead poisoning, the department shall ensure appropriate case management. The department may contract with any public or private entity, including local agencies, to conduct the case management.

SEC. 5. Section 105310 of the Health and Safety Code is amended to read:

105310. (a) There is hereby imposed a fee on manufacturers and other persons formerly, presently, or both formerly and presently engaged in the

stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead that have significantly contributed historically, currently contribute, or both have significantly contributed historically and contribute currently to environmental lead contamination.

(b) The department shall, by regulation, establish specific fees to be assessed on manufacturers and other parties formerly, presently, or both formerly and presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead that, as determined by the department, have significantly contributed historically, currently contribute, or both have significantly contributed historically and contribute currently to environmental lead contamination.

To the maximum extent practicable, the fees shall be assessed on the basis of the following criteria:

(1) A person's past and present responsibility for environmental lead contamination.

(2) A person's "market share" responsibility for environmental lead contamination.

This section shall not apply to, and no fee shall be assessed upon, any retailer of lead or products containing lead.

(c) The fee shall be assessed and collected annually by the State Board of Equalization. The annual fee assessment in subdivision (a) shall be adjusted by the department to reflect both of the following:

(1) The increase in the annual average of the California Consumer Price Index, as recorded by the California Department of Industrial Relations, for the most recent year available.

(2) The increase or decrease in the number of children in California who are receiving services pursuant to this chapter.

This adjustment of fees shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) (1) A fee shall not be assessed upon a person if that person can demonstrate, as determined by the department, that his or her industry did not contribute in any manner, as described in this section, to environmental lead contamination.

(2) A fee shall not be assessed upon a party if that party demonstrates, as determined by the department, that the lead, or the product containing lead, with which it is currently, or was historically, associated does not currently, or did not historically, result in quantifiably persistent environmental lead contamination.

(e) The fee imposed pursuant to this section shall be administered and collected by the State Board of Equalization in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code. The fees shall be deposited in the Childhood Lead Poisoning Prevention Fund, which is hereby created in the State Treasury. Moneys in the fund shall be expended for the purposes of this chapter, including the

State Board of Equalization's costs of collection and administration of fees, upon appropriation by the Legislature. All interest earned on the moneys that have been deposited into the Childhood Lead Poisoning Prevention Fund shall be retained in that fund.

(f) The fees collected pursuant to this section and the earnings therefrom shall be used solely for the purposes of implementing this chapter. The department shall not collect fees pursuant to this section in excess of the amount reasonably anticipated by the department to fully implement this chapter. The department shall not spend more than it collects from the fees and the earnings in implementing this chapter. In no fiscal year shall the department collect more than sixteen million dollars (\$16,000,000) in fees, as adjusted for inflation pursuant to subdivision (b).

(g) It is the intent of the Legislature, in subsequent legislation, to appropriate and deposit into the Childhood Lead Poisoning Prevention Fund the sum of one hundred twenty-eight thousand dollars (\$128,000) from the General Fund on July 1, 1992, to the Controller for allocation as loans as follows:

(1) Seventy-eight thousand dollars (\$78,000) to the department, for the purposes of adopting regulations to establish the fee schedule authorized by this section. The State Board of Equalization shall repay the amount of this appropriation, on or before June 30, 1993, with interest at the pooled money investment rate, from fees collected pursuant to this section.

(2) Fifty thousand dollars (\$50,000) to the State Board of Equalization, for the purposes of implementing this section. The State Board of Equalization shall repay the amount of this appropriation on or before June 30, 1993, with interest at the pooled money investment rate, from fees collected pursuant to this section.

(h) Regulations adopted for fee assessment and collection pursuant to this section shall be exempt from review by the Office of Administrative Law.

SEC. 6. Section 124125 of the Health and Safety Code is amended to read:

124125. (a) The Legislature hereby finds and declares that childhood lead exposure represents the most significant childhood environmental health problem in the state today; that too little is known about the prevalence, long-term health care costs, severity, and location of these problems in California; that it is well known that the environment is widely contaminated with lead; that excessive lead exposure causes acute and chronic damage to a child's renal system, red blood cells, and developing brain and nervous system; that at least one in every 25 children in the nation has an elevated blood lead level; and that the cost to society of neglecting this problem may be enormous.

(b) The Legislature further finds and declares that knowledge about where and to what extent harmful childhood lead exposures are occurring in the state could lead to the prevention of these exposures, and to the betterment of the health of California's future citizens. Therefore, the enactment of this

article establishes a state Childhood Lead Poisoning Prevention Program. The department shall accomplish all of the following:

(1) To compile information concerning the prevalence, causes, and geographic occurrence of high childhood blood lead levels.

(2) To identify and target areas of the state where childhood lead exposures are especially significant.

(3) To analyze information collected pursuant to this article and, where indicated, design and implement a program of medical followup and environmental abatement and followup that will reduce the incidence of excessive childhood lead exposures in California.

(c) (1) By March 1, 2019, and by March 1 of each year thereafter, the department shall prepare and prominently post on its Internet Web site information that evaluates the department's progress in meeting the goals of this section. The information shall also include all of the following:

(A) An annually updated analysis of the data and information identified and compiled relative to paragraphs (1) and (2) of subdivision (b).

(B) To the greatest extent possible, a list of the census tracts in which children test positive at a rate higher than the national average for blood lead in exceedance of the federal Centers for Disease Control and Prevention's reference level for elevated blood lead based on the data and information received during the previous calendar year.

(2) All uses and disclosures of data made pursuant to this section shall comply with all applicable state and federal laws for the protection of the privacy and security of data, including, but not limited to, the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), Title 1.81 (commencing with Section 1798.80) of Part 4 of Division 3 of the Civil Code, the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), and the federal Health Information Technology for Economic and Clinical Health Act, Title XIII of the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and implementing regulations.

SEC. 7. Section 124130 of the Health and Safety Code is amended to read:

124130. (a) A laboratory that performs a blood lead analysis on a specimen of human blood drawn in California shall report the information specified in this section to the department for each analysis on every person tested.

(b) The analyzing laboratory shall report all of the following:

(1) The test results in micrograms of lead per deciliter.

(2) The name of the person tested.

(3) The person's birth date if the analyzing laboratory has that information, or if not, the person's age.

(4) The person's address, including the ZIP Code, if the analyzing laboratory has that information, or if not, a telephone number by which the person may be contacted.

(5) The name, address, and telephone number of the health care provider that ordered the analysis.

(6) The name, address, and telephone number of the analyzing laboratory.

(7) The accession number of the specimen.

(8) The date the analysis was performed.

(c) The analyzing laboratory shall report all of the following information that it possesses:

(1) The person's gender.

(2) The name, address, and telephone number of the person's employer, if any.

(3) The date the specimen was drawn.

(4) The source of the specimen, specified as venous, capillary, arterial, cord blood, or other.

(d) The analyzing laboratory may report to the department other information that directly relates to the blood lead analysis or to the identity, location, medical management, or environmental management of the person tested.

(e) If the result of the blood lead analysis is a blood lead level equal to or greater than 10 micrograms of lead per deciliter of blood, the report required by this section shall be submitted within three working days of the analysis. If the result is less than 10 micrograms per deciliter, the report required by this section shall be submitted within 30 calendar days.

(f) A report required by this section shall be submitted by electronic transfer.

(g) All information reported pursuant to this section shall be confidential, as provided in Section 100330, except that the department may share the information for the purpose of surveillance, case management, investigation, environmental assessment, environmental remediation, or abatement with the local health department, environmental health agency authorized pursuant to Section 101275, or building department. The local health department, environmental health agency, or building department shall otherwise maintain the confidentiality of the information in the manner provided in Section 100330.

(h) The director may assess a fine up to five hundred dollars (\$500) against any laboratory that knowingly fails to meet the reporting requirements of this section.

(i) A laboratory shall not be fined or otherwise penalized for failure to provide the patient's birth date, age, address, or telephone number if the result of the blood lead analysis is a blood lead level less than 25 micrograms of lead per deciliter of blood, and if all of the following circumstances exist:

(1) The test sample was sent to the laboratory by another medical care provider.

(2) The laboratory requested the information from the medical care provider who obtained the sample.

(3) The medical care provider that obtained the sample and sent it to the laboratory failed to provide the patient's birth date, age, address, or telephone number.

SEC. 8. Section 124150 of the Health and Safety Code is amended to read:

124150. The Legislature hereby finds and declares that the activities conducted by the department pursuant to Section 124130 have confirmed and supported the findings specified in Section 124125 and, in addition, have resulted in the following findings:

(a) Very few children are currently tested for elevated blood lead levels in California. The lead registry established pursuant to Section 124130 has been effective at identifying incidents of occupational lead poisoning; however, because childhood lead screening is not now required in California, the registry is unable to serve as the exclusive mechanism to identify children with elevated blood lead levels. Additional blood lead screening needs to be done to identify children at high risk of lead poisoning.

(b) Based on emerging information about the severe deleterious effects of low levels of lead on children's health, the lead danger level is expected to continue to be lowered.

(c) Lead poisoning poses a serious health threat for significant numbers of California children. Based on lead registry reports and targeted screening results, the department has estimated that tens of thousands of California children may be suffering from blood lead levels greater than the danger level.

(d) The implications of lead exposure to children and pregnant women from lead brought home on the clothing of workers are unknown, but may be significant.

(e) Levels of lead found in soil and paint around and on housing constitute a health hazard to children living in the housing. No regulations currently exist to limit allowable levels of lead in paint surfaces in California housing.

SEC. 9. Section 124151 is added to the Health and Safety Code, to read:

124151. The department shall use an electronic database consistent with the goals outlined in Section 124125 to support electronic laboratory reporting of blood lead tests reported pursuant to Section 124130, management of lead-exposed children, and assessment of sources of lead exposures.

SEC. 10. Section 10123.5 of the Insurance Code is amended to read:

10123.5. (a) On or after January 1, 1993, every insurer issuing group disability insurance that covers hospital, medical, or surgical expenses shall provide benefits for the comprehensive preventive care of children 16 years of age or younger under those terms and conditions as may be agreed upon between the group policyholder and the insurer. Every insurer shall communicate the availability of these benefits to all group policyholders and to all prospective group policyholders with whom they are negotiating.

(b) For purposes of this section, benefits for the comprehensive preventive care of children shall comply with both of the following:

(1) Be consistent with both of the following:

(A) The most recent Recommendations for Preventive Pediatric Health Care, as adopted by the American Academy of Pediatrics.

(B) The most current version of the Recommended Childhood Immunization Schedule/United States, jointly adopted by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices, and the American Academy of Family Physicians, unless the State Department of Public Health determines, within 45 days of the published date of the schedule, that the schedule is not consistent with the purposes of this section.

(2) Provide for the following:

(A) Periodic health evaluations.

(B) Immunizations.

(C) Laboratory services in connection with periodic health evaluations.

(D) Screening for blood lead levels in children who are at risk for lead poisoning, as determined by a health care provider in accordance with the applicable California regulations.

(c) For purposes of this section, a health care provider is any of the following:

(1) A person licensed to practice medicine pursuant to Article 3 (commencing with Section 2050) of Chapter 5 of Division 2 of the Business and Professions Code.

(2) A nurse practitioner licensed to practice pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(3) A physician assistant licensed to practice pursuant to Article 3 (commencing with Section 3513) of Chapter 7.7 of Division 2 of the Business and Professions Code.

SEC. 11. Section 10123.55 of the Insurance Code is amended to read:

10123.55. (a) On or after January 1, 1993, every insurer issuing group disability insurance that covers hospital, medical, or surgical expenses shall offer benefits for the comprehensive preventive care of children 17 and 18 years of age under those terms and conditions as may be agreed upon between the group policyholder and the insurer. Every insurer shall communicate the availability of these benefits to all group policyholders and to all prospective group policyholders with whom they are negotiating.

(b) For purposes of this section, benefits for the comprehensive preventive care of children shall comply with both of the following:

(1) Be consistent with both of the following:

(A) The most recent Recommendations for Preventive Pediatric Health Care, as adopted by the American Academy of Pediatrics.

(B) The most current version of the Recommended Childhood Immunization Schedule/United States, jointly adopted by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices, and the American Academy of Family Physicians, unless the State Department of Public Health determines, within 45 days of the published date of the schedule, that the schedule is not consistent with the purposes of this section.

(2) Provide for the following:

(A) Periodic health evaluations.

(B) Immunizations.

(C) Laboratory services in connection with periodic health evaluations.

(D) Screening for blood lead levels in children who are at risk for lead poisoning, as determined by a health care provider in accordance with the applicable California regulations.

(c) For purposes of this section, a health care provider is any of the following:

(1) A person licensed to practice medicine pursuant to Article 3 (commencing with Section 2050) of Chapter 5 of Division 2 of the Business and Professions Code.

(2) A nurse practitioner licensed to practice pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(3) A physician assistant licensed to practice pursuant to Article 3 (commencing with Section 3513) of Chapter 7.7 of Division 2 of the Business and Professions Code.